

European Union Sustainability Outlook

April/May 2024

Foreword

Why This Matters

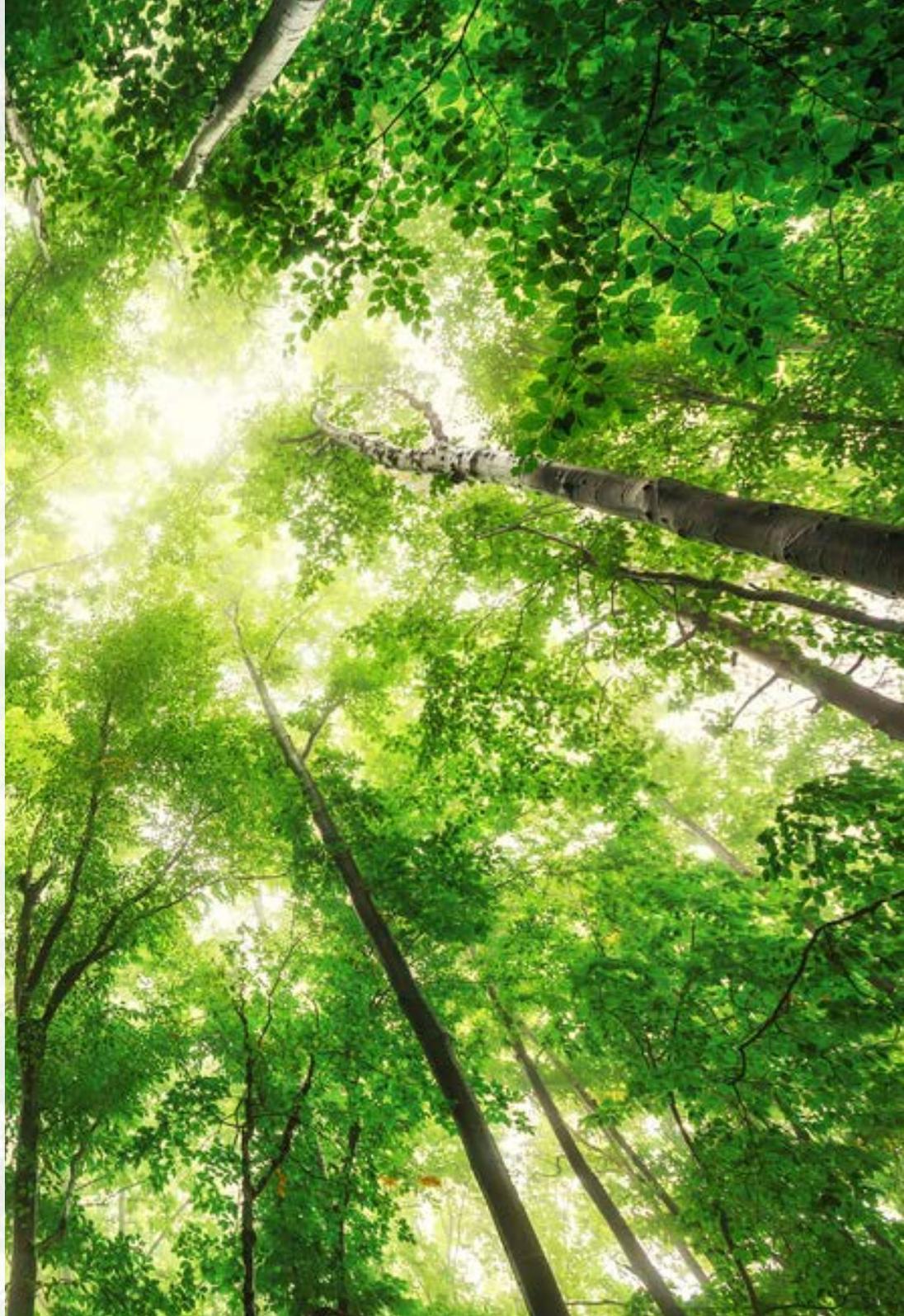
As we set out on the following pages, there is a **raft of new legislation** coming into effect now and over the coming months at the European Union (EU) level, which is intended to underpin and encourage a major shift towards a **net zero economy and greater environmental sustainability**.

Some sectors are directly in the frame – textiles, food, packaging, forestry, chemicals, construction. But the legislation goes further than that and will **have implications for a wide range of companies across many sectors of the economy**. Even if your company is not in one of the sectors which are directly addressed by some of the new legislative instruments, you may need to be able to **demonstrate compliance in your supply chain** on issues such as **packaging, forestry-origin products, chemicals, critical raw materials, as well as forced labour and carbon footprint**.

The aim of the regulations is to effect **direct change in certain areas**, such as forced labour, packaging and forestry-origin products, but also to bring about a much **wider change in corporate behaviour** as part of the transition to a net zero economy through **requiring companies to be more transparent** about the impact of their operations, and **policing more stringently the quality and justifiability of the “green” claims** companies make.

The package of legislation described in the following pages has largely been concluded in the final sessions of the current European Parliament. Implementation will however fall to the next European Commission and Parliament, and will take place in the new context created by the European Parliament elections in June 2024.

The political profile of the new Parliament may mark a shift in opinion, reflected currently in the polls, with an increased voice for representatives who are sceptical about the move to net zero. If this transpires, it is **unlikely to affect the legislation** that companies will have to comply with, but it will create a **more sensitive environment** in which companies will have to work through how to comply.



How We Can Help

We combine a unique mix of legal and public policy expertise to provide **advocacy, regulatory and strategic advice** to a range of leading companies from a variety of industries, including the chemicals, plastics, cosmetics, packaging, construction and retail sectors, as well as industry associations.

Our EU Public Policy team has been recognised since 2019 as **one of the [Best in Brussels](#)** and **in the spotlights of [Chambers and Partners](#)**.

We invested in our sustainability policy practice early on, serving clients across a wide range of industries and issues, as trusted advisers and well-respected counterparts to key policymakers and regulatory authorities.

We are fully immersed in relevant ongoing regulatory and legislative policy debates related to **sustainability and environmental, social and governance (ESG)** and have operational experience to address compliance with the more granular aspects of regulatory compliance.

We accompany our clients throughout the complete life cycle of legislative and regulatory issues affecting their operations – from **cradle to grave** – combining best-in-class **advocacy, regulatory compliance and EU litigation expertise**.

As lawyers qualified in various jurisdictions and areas of practice, we provide clients with pragmatic, effective and strategic expertise and services regarding environmental and sustainability policy through our presence over 40 offices across four continents. Our team comprises more than 70 dedicated, collaborative public policy professionals and more than 1,500 lawyers globally.

We also work seamlessly with our [Environmental, Safety & Health](#) Practice Group, one of the largest and best-regarded legal and regulatory teams, with deep expertise in the chemicals, packaging, waste and food sectors.



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Contents

We are pleased to share our selection of relevant developments in EU sustainability law and policy over the past few months.



Green Value Chain and Reporting

Corporate Sustainability Reporting Directive (CSRD)	4
Corporate Sustainability Due Diligence Directive (CSDDD) Cleared Path for Formal Approval	4
Forced Labour Ban Regulation	5
Deforestation-Free Regulation (EUDR)	5



Green Deal Industrial Plan

Critical Raw Materials Act (CRMA)	6
The Net-Zero Industry Act	7
Relaxation of State Aid Rules	7



Circular Economy

New EU Packaging Rules	8
European Parliament's Stance on Extended Producer Responsibility (EPR) for Textiles and Food Waste in the EU	9
Microplastics	9
Ecodesign for Sustainable Products Regulation (ESPR)	10
Energy Performance of Buildings Directive (EPBD)	11
Revision of the Construction Products Regulation (CPR)	12
CountEmissions EU	13



Chemicals

Per- and Polyfluoroalkyl Substances (PFAS) Restriction Proposal	14
REACH Revision	15
CLP – European Parliament Endorses Provisional Agreement	16



Greenwashing

Empowering Consumers Directive	17
Green Claims Directive (GCD)	18
Recent Case Law	18



Climate

Climate Target	19
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Other

Next Steps? Rules of Procedure	19
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Green Value Chain and Reporting

Corporate Sustainability Reporting Directive (CSRD)

As indicated in our **last Sustainability Outlook**, the [Commission Delegated Regulation \(EU\) 2023/2772](#) published on 22 December 2023 and subsequent *corrigendum* published on 19 April 2024, establishes the **European Sustainability Reporting Standards (ESRS)**, which are specifically **designed for European companies**. These standards have been created to **comply with the reporting obligations introduced by the CSRD**.

The CSRD introduces two distinct reporting obligations for EU and non-EU companies, which were expected to be published in separate periods, provided the different reporting periods embedded in the CSRD. The European Commission has proposed however **a two-year delay on the adoption date for the ESRS for all non-EU companies to June 2026** (instead of June 2024 as stipulated by the CSRD). The proposed delay has been [agreed](#) by co-legislators in February 2024.

Non-EU companies shall – provided that their European subsidiaries would not be required to report earlier – start reporting only in 2029 for the financial year 2028. As such, the proposed delay would not be problematic for the reporting purposes of non-EU companies. The proposed decision will now be submitted for **publication in the Official Journal of the EU**.

Corporate Sustainability Due Diligence Directive (CSDDD) Cleared Path for Formal Approval

The path towards adopting the **highly debated CSDDD** has been turbulent, with **last minute negotiations changing the scope of application of the law**.

In an unexpected turn of events, Germany's co-governing Free Democratic Party (FDP) announced its opposition to the law, even after the co-legislators' provisional agreement reached on 14 December 2023, causing numerous reactions in Brussels. Some countries supported this opposition, leading to a **failure of approval in Council** (see our client alert [here](#)), which risked the future adoption of the law. To solve this impasse, the Belgian presidency entered into **last minute negotiations with the European Parliament**, where in fact, amendments were introduced **narrowing down the scope of application**.

Ultimately, the revised deal includes fewer companies in scope, namely:

- **EU-incorporated companies** with **more than 1000 employees** and **more than €450 million of net worldwide turnover**
- **Non-EU companies** of **more than €450 million turnover in the EU**

The scope becomes more specific to **both EU and non-EU companies**:

- Where the **ultimate parent company exceeds the above thresholds on a group level**
- Where **franchising or licensing agreements** are established **with more than €2.5 million royalties** and **more than €80 million worldwide turnover**

The companies captured by the revised scope will be subject to important **due diligence obligations**, to ensure that **adverse environmental and human rights (including forced labour) impacts are prevented**.

Next steps – The **European Parliament voted on the revised deal** at its last plenary of this mandate, **on 24 April**. The Council will follow suit in May, after which the law will be published in the Official Journal of the EU. **Obligations and reporting dates will kick in gradually**, as analysed in our recent [client alert](#).





Green Value Chain and Reporting

Forced Labour Ban Regulation

The EU's co-legislators [reached](#) a political agreement on the EU's Forced Labour Ban Regulation on 5 March.

The future law will effectively **prohibit the placing and making available on the EU market, or the export from the EU market, of any product made using forced labour, irrespective of the source.** The scope of the proposal covers **all economic operators and all products made available within the EU market**, meaning both products made in the EU for domestic consumption and for export, as well as imported goods that are manufactured using forced labour, wholly or partly, at any stage of the supply chain. It is worth noting the regulation does not create additional due diligence obligations for economic operators.

The future law follows the **International Labour Organization's definition of forced labour** ("all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily"), but **explicitly includes forced child labour.**

It introduces a **risk-based approach for conducting forced labour investigations**, with a set of criteria put in place to assess violations of the law. Various **digital infrastructures** will be established, namely, the Union Network Against Forced Labour Products, the Forced Labour Single Portal, the Database of Forced Labour Risk Areas or Products and the Single Information Submission Point, to assist through different investigative phases.

Regarding the **investigations** as such, the **European Commission** will be **leading** the investigations **where non-EU countries** are involved, whereas **national competent authorities** will be leading in cases **where there is a risk in their own territory.** Importantly, **economic operators** would be involved and considered **through the different phases** of investigations.

Next steps – The **European Parliament** voted on the revised deal at its last plenary of this mandate, on 23 April 2024. The Council will follow suit in May, after which the law will be published in the Official Journal of the EU. The **regulation is set to apply** 36 months after the entry into force, currently anticipated **for mid-2027.**

Deforestation-Free Regulation (EUDR)

The EU's Deforestation-free Regulation, (**EUDR**) has been **in force since 29 June 2023** and will **apply from 30 December 2024**, when an array of new obligations will affect the supply chains of commodities and products in scope.

The EUDR's overarching goal is to mitigate the impact of deforestation and forest degradation, with the aim to reduce greenhouse gas emissions and preserve biodiversity. Specifically, the regulation establishes **strict due diligence requirements for companies that place certain commodities and products** made from them on the European market or export them. The **scope** includes **wood, beef, palm oil, soy, coffee, cocoa and rubber, but also a positive list of derivatives of these products**, detailed in an annex of the regulation. The **list of products and commodities will be regularly updated and reviewed** to account for changing deforestation patterns.

The EUDR will have significant international implications, especially on the trade of forest-related products. For **any relevant goods or commodities to be placed on the EU market (or to be exported)**, these must be:

- Deforestation-free
- Produced in compliance with relevant legislation of country of production
- Covered by a due diligence statement

There are still a lot of issues to be covered in **secondary legislation** before its entry into force in December 2024, **in the form of implementing acts that are currently being developed.** Among other things, the **functioning of the "register" information system and the high-risk countries categorisation (benchmark)** need to be defined.

The European Commission is **falling behind on this preparatory work, including on the preparation of guidance** that aims to assist member states and industry with the implementation of the rules. **Many calls** have therefore been made **to delay the application date, due to this uncertainty.** For the time being, the European Commission has **confirmed the delay of the benchmarking exercise, but not the delay of the rules as such.**



Green Deal Industrial Plan

The [Critical Raw Materials Act](#) (COM(2023)0160), alongside the [Net Zero Industry Act](#) (COM(2023)0161) and the reform of the relaxation of state aid rules for decarbonisation projects, is one of the flagship legislative initiatives under the Green Deal Industrial Plan (GDIP). **The GDIP is a political strategy launched by the Commission in March 2023** to boost the production of green technologies in the EU. This strategy has been identified by the European Commission as the main response of the EU to the US Inflation Reduction Act.

Critical Raw Materials Act (CRMA)

The CRMA Regulation was adopted on 18 March, and it is waiting for publication. **This regulation aims to enhance the supply in Europe of raw materials crucial for the production of green technologies, such as electric cars, solar panels and smartphones.** Specifically, the law seeks to bolster supply of strategic raw materials by establishing economic incentives and a more stable, secure business framework for mining and recycling projects, with faster and simpler authorisation procedures.

The final text identifies two lists of materials (34 critical and 17 strategic) crucial for the green and digital transitions, as well as for the defence and space industries.

It establishes **three benchmarks for the EU's annual consumption of raw materials:**

- **10% from local extraction**
- **40% to be processed in the EU**
- **25% to come from recycled materials**

Extraction projects will receive permits within a maximum period of 27 months, while recycling and processing projects should receive permits within 15 months, with limited exceptions aimed at ensuring meaningful engagement with affected local communities and conducting proper environmental impact assessments in complex cases.

Large companies manufacturing strategic technologies (e.g. producers of batteries, hydrogen or renewable generators) **will be required to conduct a risk assessment of their raw materials' supply chain.** This includes mapping the extraction, processing, or recycling of strategic raw materials; analysing factors affecting their supply; and assessing vulnerabilities to supply disruptions. A "large company" is defined as one with more than 500 employees on average and a net worldwide turnover of more than €150 million in the last financial year.





Green Deal Industrial Plan

The Net-Zero Industry Act

The Net-Zero Industry Act (NZIA), in line with the GDIP's objective, aims to **boost the manufacturing of key technologies needed for the EU's climate and energy objectives**. To this end, the NZIA sets a target for Europe to produce 40% of its annual deployment needs in net-zero technologies by 2030, based on National Energy and Climate Plans (NECPs), and to capture 15% of the global market value for these technologies.

The law aims to achieve this goal by **introducing faster permitting procedures for selected technologies**. It establishes **a single list of net-zero technologies**, including all renewable technologies, nuclear, industrial decarbonisation, grid, energy storage technologies and biotech. Industries such as steel, chemicals or cement that produce components used in net-zero technologies included in the proposed text would also be eligible as strategic projects. However, Member States would be able to refuse recognition of a project as strategic if it includes a technology not accepted as part of its energy mix.

The time limit for delivering a permit for large net-zero technology manufacturing projects (more than 1GW) would be **a maximum of 18 months**, while for smaller projects, it would be **12 months**. Strategic projects would qualify for shorter time limits.

The law also foresees the creation of **"Net-Zero Acceleration Valleys"** initiatives **to speed up the permitting process** by delegating parts of the environmental assessment evidence collection to member states. Net-zero acceleration valleys are territories that concentrate companies working with a single net-zero technology.

The European Parliament adopted its first reading position on 25 April 2024. The proposal now awaits only the formal approval of the Council of the EU before its publication in the Official Journal of the EU.

Relaxation of State Aid Rules

The GDIP also includes **relaxation of the state aid rules to encourage investments in green technologies**. The EU has revised state aid rules, with two separate interventions:

- It amended the [General Block Exemption Regulation \(GBER\)](#) to include investments in clean energy under the category of state aid that can be granted without prior notification to, and approval by, the European Commission.
- It amended the [Temporary Crisis Framework](#), adopted in March 2022, to counter the economic crisis triggered by the Russia-Ukraine war, converting it into the Temporary Crisis and Transition Framework (TCTF) to specifically address fossil fuel dependency. More details on these amendments can be found in our [client alert](#) dedicated to the matter.

As an example of the effective use of this scheme at the Member State level, **Germany released €2.2 billion in industry decarbonisation subsidies** at the national level to help companies reduce or eliminate the use of fossil fuels in industrial processes. According to the German national scheme, companies can receive up to €200 million each for projects to electrify processes or transition to renewable hydrogen under the subsidy program approved under the TCTF.



New EU Packaging Rules

On 24 April, the European Parliament [adopted the new EU Packaging Regulation](#), a piece that will revolutionise the industry by common, EU-wide rules for packaging circularity. **The three key requirements will address packaging:**

- **Recyclability**
- **Reusability**
- **Uptake of recycled content**

Recyclability

The EU Packaging Regulation will require compliance with recyclability performance grades. The regulation foresees that the following should be achieved by:

- **2030** – Performance **Grade A, B or C** (recyclability of **at least 70%** per unit, in terms of weight)
- **2038** – Performance **Grade A or B** (recyclability of **at least 80%** per unit, in terms of weight)

Packaging scoring lower than Grade C in terms of recyclability will not be allowed on the EU market as of 2030 and lower than Grade B as of 2038.

Reuse

The EU Packaging Regulation establishes quantitative **reuse targets** on certain types of packaging. The targets will apply to transport packaging and sales packaging used for transporting products, including via e-commerce.

As of 1 January 2030, 40% of such packaging will have to be reusable, integrated into a system for reuse.

However, for transport within:

- The same company or linked enterprises
- The same EU country

the **use of 100% reusable packaging** will be required.

The detailed rules and methodology for calculation of the reuse targets will be established by the European Commission by 30 June 2027.

Recycled Content

Plastic parts of packaging will be mandated to contain a certain level of recycled content. The **general target for recycled content in packaging will be set at 35%**, while lower levels will be required for:

- Contact-sensitive **packaging from PET and for plastic bottles – 30%**
- Contact sensitive packaging from **other plastic materials – 10%**

Recycled plastic sourced from outside the EU will be subject to further regulatory requirements – companies will have to prove that it has been recycled in facilities complying with environmental rules equivalent to those applicable in the EU. By the end of 2026, the European Commission will establish the methodology for assessing and certifying this equivalence.

Next steps – The EU Packaging Regulation will now have to be endorsed by the Council of the EU before being published in the Official Journal of the EU.



European Parliament's Stance on Extended Producer Responsibility (EPR) for Textiles and Food Waste in the EU

On 13 March 2024, the European Parliament adopted its [legislative resolution on the Waste Framework Directive](#) (WFD). The proposal is based on two sets of measures, from which the first targets waste textiles in the EU, and the second, food waste.

Textiles

The proposal will introduce **national EPR schemes**, under which **“textile producers” will bear responsibility for the costs associated with the management of waste textiles**. The products subject to the EPR will include clothing, footwear, clothing accessories (e.g. hats, gloves and belts), household textile products (e.g. blankets and curtains) and also mattresses and carpets. **EPR fees will need to cover separate collection, transport, sorting, preparation for reuse, recycling or other treatment processes of waste textile**. Member States would have to establish these schemes 18 months after the entry of the WFD into force

Food

Under the revised WFD, Member States **will be obliged to reduce by 2030 the generation of food waste**:

- In processing and manufacturing by at least 20%
- Per capita, jointly in retail and other distribution of food, in restaurants and food services, and in households, by at least 40%

in comparison to the amount generated as an annual average between 2020 and 2022.

Next steps – The works on the proposal will be continued after the European Parliament reconvenes after June's elections. Member States will have 12 months to transpose the WFD into their national laws.

Microplastics

On 23 April 2024, after a preceding day of debate, Parliament adopted its [first reading position on the Regulation on Preventing Plastic Pellet Losses To Reduce Microplastic Pollution](#). The regulation will introduce new regulatory requirements for handling plastic pellets during transport and at installations. The proposed measures include:

- **Protocols to prevent pellet leakage**, such as use of tear-resistant, waterproof, sealed packaging for containment.
- **Containers** used for storing and transporting pellets will be required to bear a clear **warning label**: “Danger. Harmful to the environment.”
- Vehicles transporting pellets will need to undergo **regular inspections and cleaning** upon arrival or departure from a site.
- Operators will be tasked with developing and regularly updating **risk assessment plans** for their facilities.
- Both operators and carriers will be obligated **to maintain records** of annual loss estimates and total quantities of plastic pellets handled.

The proposed regulation also empowers the European Commission to explore the feasibility of implementing **chemical traceability** for plastic pellets through the establishment of a chemical signature.

Following a spill of plastic pellets from a cargo ship off the coast of Spain in late 2023, the EU legislators are **discussing whether maritime transport should be included** in the scope of this regulatory regime. Some of the EU countries want the measure to be implemented by the International Maritime Organization.

Next steps – Once the Council of the EU adopts its general approach, the **co-legislators will start political trilogue negotiations** on the proposal. This, however, will only be possible **after the European parliamentary elections**.

Ecodesign for Sustainable Products Regulation (ESPR)

[The proposal for the future EU Ecodesign framework](#) is on the last **stage of legislative work**. Political agreement on the file between the co-legislators was reached in December 2023 and was then endorsed by the European Parliament during the plenary vote on 23 April 2024.

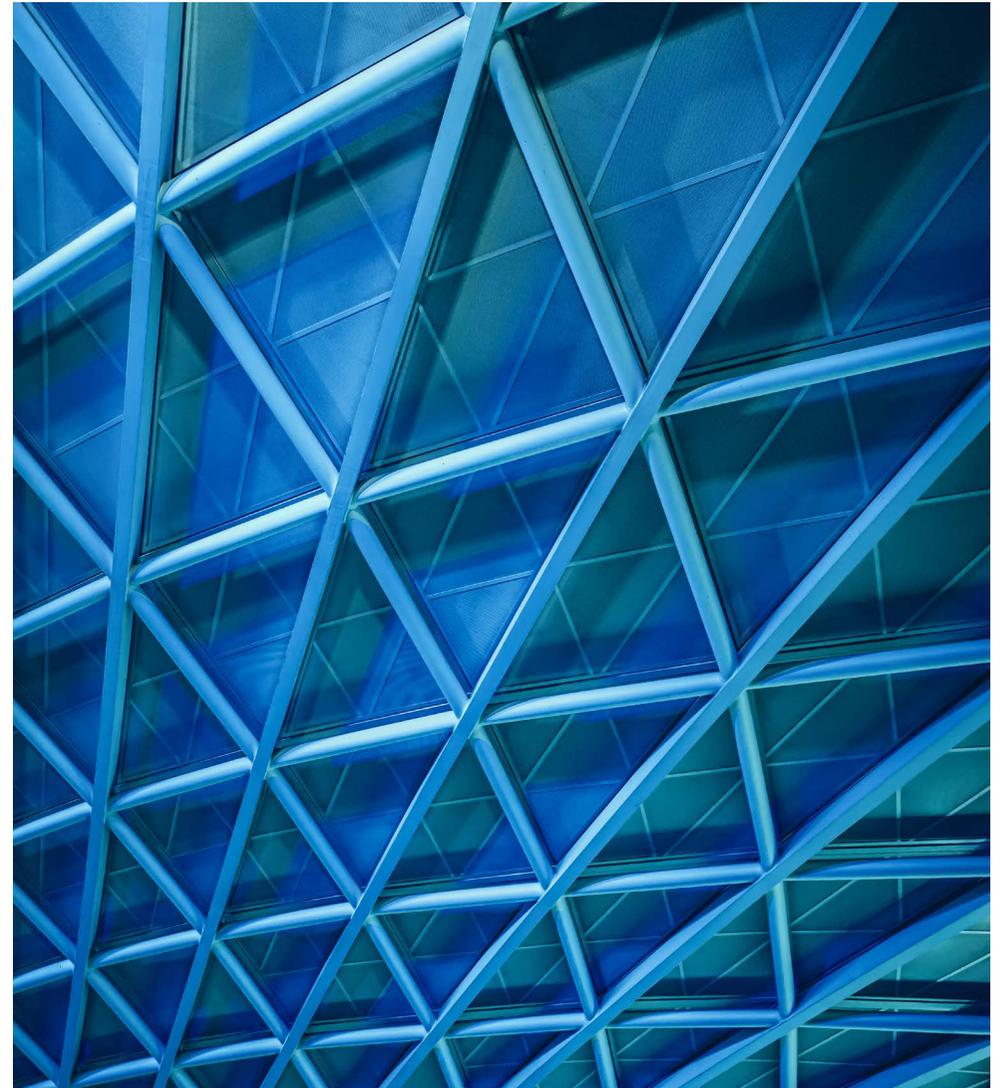
ESPR **will replace the existing Ecodesign Directive**, which currently covers energy-related products usually for home or office use (such as displays, cooking appliances, air heaters, etc.). The scope of the new ESPR will **not be limited to energy-related products** but could be potentially applicable to almost any goods.

Ecodesign requirements will be prepared on an ongoing basis following the European Commission's three-year "working plans". **Working plans will shortlist groups of products** for which the requirements will be set up. The text of ESPR requires that the European Commission **prioritises iron, steel, aluminium, textiles** (notably garments and footwear), **furniture** (including mattresses), **tyres, detergents, paints, lubricants and chemicals, as well as ICT and energy products**, for its first working plan.

The first working plan should be communicated by the European Commission no later than nine months after entry of the regulation into force. Unofficial information suggests that ecodesign requirements **for textiles might be adopted by the European Commission as early as Q1 of 2025**. To this end, a first draft of a [study on product policy instruments for textiles](#) was published on Friday 23 February.

The regulation will also mandate **a ban on destruction of some unsold consumer apparel**, clothing accessories and footwear, and introduce **obligatory reporting on volumes of discarded unsold consumer goods**.

Next steps – After endorsement from the side of the European Parliament the political agreements **needs to be formally voted on by the Council** of the EU. Only then can the proposal be published in the Official Journal of the EU and become binding EU law.



Energy Performance of Buildings Directive (EPBD)

The EU, aiming to enhance the energy efficiency of European buildings and ultimately reduce their environmental impact, has worked during this mandate on the [revision](#) of the [Energy Performance of Buildings Directive](#) (Directive (EU) 2018/844).

The proposed revision aims to **gradually decrease greenhouse gas (GHG) emissions and energy consumption in the EU building sector**, with the goal of achieving climate neutrality by 2050.

Despite the initial ambitions of the European Commission, the legislative initiative was scaled back in terms of its scope due to the needs expressed by member states during negotiations. Member States secured greater flexibility in terms of “mandatory” interventions compared to what was initially proposed. The directive **now requires member states to adopt their own national trajectory to reduce the average primary energy use of residential buildings by 16% by 2030 and 20-22% by 2035.**

For **non-residential buildings, they will need to renovate the worst-performing 16% of buildings by 2030 and the worst-performing 26% of buildings by 2033.** Member states will have the option to exempt certain categories of buildings, including historical buildings or holiday homes.

The most impactful provisions are those stipulating that **all new residential and non-residential buildings must have zero on-site emissions from fossil fuels**, beginning on 1 January 2028 for publicly owned buildings, and on **1 January 2030 for all other new buildings**, with specific exemptions possible. The directive also includes new provisions to **gradually phase out fossil fuels from heating** in buildings and promote the deployment of solar power installations, taking into account national circumstances. Subsidies for stand-alone boilers powered by fossil fuels will be prohibited as of 1 January 2025.

The directive encourages member states to allocate national and European funding to support investments in energy efficiency and related interventions, although it does not provide funds for these purposes itself.

On 12 April, the Council of the EU adopted the revised EPBD. As the text had already been formally adopted by the European Parliament, the directive will now undergo publication in the EU Official Journal before it comes into effect.





Revision of the Construction Products Regulation (CPR)

Another significant legislative intervention was the adoption of the regulation that has amended the existing [Construction Products Regulation](#) (Regulation (EU) No 305/2011). The principal objective of the [revision](#) (COM(2022)0144) was **to strengthen the single market for construction products and support the green and digitalisation goals** of the EU.

The main elements of novelty include:

- Accelerating and streamlining of the publication of standards related to construction products
- Boosting the reuse and remanufacturing of used construction products
- Centralising all product information via digital product passports

Some of the most noteworthy aspects of the law include:

- **Standardisation** – The new rules aim to improve the publication of standards for construction products in the EU. The Commission is empowered to adopt harmonised technical specifications without going through standardisation bodies in one specific case specified by the regulation. For other cases, involvement of standardisation bodies remains, but the mechanisms for adopting standards have been expedited to avoid procedural delays.
- **Environmental obligations of manufacturers** – To promote sustainability, the new rules list environmental requirements that manufacturers must include in their declarations of performance and conformity.
- **Harmonised zones** – One simplification element of the law is the creation of so-called “harmonised zones”, which ensure greater alignment with the rules of the European single market. Harmonised zones will allow all construction products within the same “zone” to be regulated under the same harmonised technical specifications.
- **Digital product passport** – The revised regulation will require products to have a digital product passport, allowing users to access instructions and information, for example, via a QR code at the worksite.

The revised CPR will **complement the ESPR, as the main EU regulatory framework to improve the circularity of selected products available on the European market**. ESPR standards will come into play only under certain conditions and when they concern construction products in terms of circularity requirements. This will occur, for instance, in cases where the CPR does not establish adequate performance and information requirements for construction products regarding their sustainability, or when such requirements under the CPR are unlikely to sufficiently achieve the environmental sustainability objectives pursued by the ESPR.

Entry into force – The European Parliament adopted its first reading position on 10 April 2024. The proposal now requires formal adoption by the Council of the EU before it can be published in the EU Official Journal. The text will enter into force on the 20th day following its publication in the EU Official Journal. It will begin to **apply 12 months from the date of entry into force**, with exceptions for certain articles and annexes (e.g. on penalties).

CountEmissions EU

In July 2023, the European Commission unveiled a trio of proposals with the aim of **promoting sustainability in freight transport**: [CountEmissions EU](#), [Railway Capacity](#), and [Weights and Dimensions](#).

The CountEmissions EU initiative (“[Accounting of greenhouse gas emissions of transport services](#)” – COM(2023)0441) is designed **to integrate a methodology for GHG emissions from transport services**. Covering both **freight and passenger** transport, this initiative seeks to ensure the reliability and accuracy of GHG emissions data to facilitate fair comparisons between different transport services. While it establishes a methodological framework, it does not mandate its use. However, organisations choosing to calculate and disclose GHG emissions from transport services must adhere to the provided methodology.

On 10 April 2024, the **European Parliament adopted its initial stance** on the proposal, enabling its consideration by the new Parliament and the Council of the EU for further development during the first or second reading in the forthcoming legislative term.

The Parliament’s legislative resolution, representing its first reading position, **supports the voluntary approach** proposed by the Commission and backs the recommended well-to-wheel methodology for emissions calculation. Additionally, MEPs voted in favour of the Commission presenting **a methodology for assessing the life cycle GHG emissions of all transport modes within two years of the proposal’s enactment**, along with recommendations for effective implementation. Furthermore, the text urges the Commission to create a publicly accessible, free-of-charge **calculation tool** to ease financial and administrative burdens, particularly for small and medium-sized enterprises. It emphasises the necessity of establishing standardised metrics for representing GHG emissions and facilitating comparisons, such as CO₂ emitted per tonne-kilometre for freight transport and CO₂ emitted per passenger kilometre for passenger transport. Finally, MEPs introduced specific provisions aimed at enhancing data transparency.

As of now, the **Council of the EU has yet to reach a consensus** (general approach) on this file, but an agreement may potentially be reached during the upcoming Transport Council meeting scheduled for 18 June 2024.





Chemicals

Per- and Polyfluoroalkyl Substances (PFAS) Restriction Proposal

On 13 January 2023, Germany submitted a proposal to restrict all PFAS on behalf of five countries: Denmark, Germany, the Netherlands, Norway and Sweden. As per the applicable process, a stakeholder consultation on the proposal was initiated on 22 March 2023, and concluded on 25 September 2023. **The European Chemical Agency (ECHA) received an unprecedented number of comments, underscoring the significant interests involved.** The comments received by ECHA will now inform the scientific opinions to be prepared by ECHA's Committee for Risk Assessment (RAC) and Committee for Socio-economic Analysis (SEAC) on the proposal.

These comments have already prompted the revisiting of the restriction dossier by the countries that proposed it last year. This revision, announced by ECHA in an update released in March 2024, was motivated by the member states involved and grounded in the numerous stakeholder comments received during the public consultation. The restriction dossier updated by the five countries should also undergo assessment by RAC and SEAC, forming the basis of their opinions.

In the meantime, **ECHA's committees are assessing the initially proposed restriction**, with each committee focusing on the specific sectors outlined in the proposal. Consequently, questions arise regarding the overall compliance of the process with the procedures outlined in the REACH Regulation.

In a recent update, ECHA informed stakeholders that discussions in 2024 will centre on the following topics, accompanied by their respective timelines:

March 2024 Meetings

- (i) Consumer mixtures, cosmetics, and ski wax
- (ii) Hazards of PFAS (RAC only)
- (iii) General approach (SEAC only)

June 2024 Meetings

- (i) Metal plating and manufacture of metal products
- (ii) Additional discussion on hazards (RAC only)

September 2024 Meetings

- (i) Textiles, upholstery, leather, apparel, carpets (TULAC)
- (ii) Food contact materials and packaging
- (iii) Petroleum and mining

ECHA is expected to provide further details about the committees' plans to evaluate the remaining sectors and the subsequent procedural steps.

Given the complexity of the issue, RAC and SEAC will likely need more than 12 months to finalise their opinions. It is also worth considering that, in light of the announced revision of the restriction proposal by the member states, the timeline will likely be further extended.





REACH Revision

Last autumn, the European Commission confirmed that **the revision of the REACH Regulation (EC) No 1907/2006**, initially planned for the term nearing conclusion, **would be postponed to the upcoming legislative term**.

The official announcement of the postponement was made during the presentation of the European Commission's 2024 work programme in the European Parliament last October. The Commission's decision was then reiterated during the 50th Competent Authorities for REACH and Classification, Labelling and Packaging (CLP) (CARACAL) meeting of November 2023. During that meeting, the Commission noted that, given the importance of the measure, which requires sufficient time for preparation and discussion, it will not be presented at the end of the Commission mandate – without clarifying if the proposal's presentation will occur in 2025. In response to explicit demands from the business group ChemSec and the European Environmental Bureau (EEB) for more certainty, **the Commission stated that it was not yet possible to provide a concrete plan for 2025**. The Commission also clarified that the work on information requirements and essential uses encompasses both political and technical elements, and the timing for advancing on these elements is still under discussion.

Essential Use Criteria

In the meantime however, the Commission issued its long-awaited [Communication](#) on “Guiding Criteria and Principles for the **Essential Use Concept** in EU Legislation Dealing With Chemicals” on 22 April 2024 (accompanied by a [Q&A](#)). The criteria were announced in the [Chemicals Strategy for Sustainability](#) with the goal of facilitating the phasing out of the most harmful substances in nonessential uses.

Essentiality is established when:

- The **use is necessary for health and/or safety or is critical for the functioning of society**.
- There are **no acceptable alternatives**.

In terms of scope, the “**most harmful substances**” to which the concept will be applied include substances classified in the following hazard classes:

- Carcinogens, mutagens and/or reprotoxics, Cat. 1A and 1B
- Endocrine disruptors Cat. 1 (human health & environmental)
- Respiratory sensitisers Cat. 1
- Specific target organ toxicity – repeated exposure (STOT-RE) Cat. 1, including immunotoxicity and neurotoxicity
- PBT, vPvB, PMT, vPvM
- Hazardous to ozone layer Cat. 1

The communication also includes a nonexhaustive list of necessary uses.

To fully assess the impact of the introduction of the concept however, we will need to await its introduction within the revised REACH Regulation as well as product-specific legislation.



CLP – European Parliament Endorses Provisional Agreement

On 19 December 2023, the European Parliament and the Council reached a provisional agreement on the revision of the CLP Regulation. Based on the agreement, on 24 April, the European Parliament adopted its first reading position on the file [LINK to be inserted after the vote].

New Hazard Classes and Evolution of the Harmonised Classification Procedure

The revision introduces the **new hazard classes (ED, PBT, vPvB, PMT, vPvM)** enacted by [Commission Delegated Regulation \(EU\) 2023/707](#) into the CLP, setting them as a priority for hazard classification.

In line with the “[one substance, one assessment](#)” approach, it also fosters coordination between the CLP and other regimes by enabling the Commission to adapt substances’ classification in accordance with classifications under [REACH](#), the [Plant Protection Products Regulation](#) and the [Biocidal Products Regulation](#). **New competences** are also granted to the Commission to **initiate hazard classification**, while this capacity is currently exclusive to the member states and the industry.

The revision also **incentivises the use of uniform self-classifications**. In this regard, notifiers must:

- Provide justification if they wish to diverge from existing entries
- Update their notifications after a decision to change the classification of a substance has been taken pursuant to a review (instead of 18 months currently)
- Have their identity disclosed within the public substance registration information

As is already the case in relation to REACH restrictions, the **grouping of substances is prioritised** in proposals for CLH whenever it is considered scientifically justified and possible by a competent authority or the COM. It should be based on clear scientific reasoning, taking into account how the available information (i) supports the grouping and (ii) allows the properties of the substances to be reliably predicted from other substances in the group.

Finally, the revision introduces a first reference to the classification of multiconstituent substances (**MOCS**) within the CLP, but without providing a definition of this type of substances. In light of their particular characteristics, **specific classification principles apply**, namely:

- Information on the MOCS itself is taken into account for CMR, endocrine disrupters, persistency, mobility and bioaccumulation properties, in addition to the constituent’s classification.
- If a MOCS is classified due to its constituent(s), a mixture containing this substance is classified on the basis of the % of those constituent(s) in the mixture.
- Above principles so far do not apply to plant extracts not chemically modified, which benefit from a derogation.

Revised Labelling and Packaging Obligations

The amendment brings about greater flexibility regarding the use of **fold-out labels**. While the current ECHA guidance documents preclude their use for the purpose of accommodating multilingual labels, their **use will be permitted** under the revised CLP. New formatting requirements set out under Annex I will apply.

Digital labels are also introduced, however **only as a complement** to physical labels. One may indeed exclusively rely on the digital label to include labelling elements that are not instrumental to the protection of health, safety and the environment, and which are not mandatory under the United Nations’ Globally Harmonized System of Classification and Labelling of Chemicals (‘GHS’). Mandatory elements, including hazard statements, pictograms and signal words, would remain on the physical label.

On the packaging side, the revision fosters the use of **refillable containers**, in line with the principles of the Packaging and Packaging Waste Regulation.



Greenwashing

At the EU level, significant developments regarding “greenwashing” have emerged. Specifically, [Directive \(EU\) 2024/825](#), dubbed the “**Empowering Consumers Directive**”, was recently adopted. Additionally, the EU is actively advancing the **Green Claims Directive** proposal ([COM\(2023\)0166](#)). This proposal seeks to establish a verification mechanism to substantiate voluntary environmental claims made by private corporations concerning their company, products, and/or services.

These two regulatory frameworks are interconnected and should not be seen as distinct interventions. Directive (EU) 2024/825 effectively aims, *inter alia*, to incorporate greenwashing practices into the list of misleading practices outlined in Directive 2005/29/EC, while the Green Claims Directive outlines the characteristics that voluntary environmental claims must possess to be considered admissible (i.e. not misleading) and delineates the procedure for subjecting the claim to external verification to confirm its validity.



Empowering Consumers Directive

Regarding the first of the two mentioned regulatory interventions, **Directive (EU) 2024/825** concerning empowering consumers for the green transition through enhanced protection against unfair practices and better information (the “**Empowering Consumers Directive**”) was published in the Official Journal of the EU on 6 March 2024, and has been **in force since 26 March 2024**.

The Empowering Consumers Directive will, among other provisions, amend the Unfair Commercial Practices Directive. More precisely, Directive (EU) 2024/825 **establishes stringent criteria for the use of “generic environmental claims”**, also providing examples of generic claims in a non-exhaustive list, including “environmentally friendly”, “eco-friendly”, “green”, “nature’s friend”, “ecological”, “environmentally correct”, “climate friendly”, “gentle on the environment”, “carbon friendly”, “energy efficient”, “biodegradable” and “biobased”. According to the Empowering Consumers Directive, **anything making a claim deemed generic will need to prove to possess “excellent recognised environmental performance”** relevant to the claim. This means “environmental performance compliant with EU regulation on the EU Ecolabel” (Regulation (EC) No 66/2010) or with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in the Member States, or top environmental performance in accordance with other applicable Union law”. Only if such excellent recognised environmental performance can be shown and only if it is relevant to the claim, can a generic environmental claim be used.

Regarding **offsetting practices**, claims suggesting a product has a neutral, reduced or positive environmental impact through greenhouse gas emissions offsetting **will be prohibited. Such claims are permissible only if they pertain to the product’s life cycle impact and are not reliant on offsetting emissions outside the product’s value chain**.

The directive also addresses commercial communications and other information provided to consumers concerning circularity aspects of products, such as durability, reparability or recyclability.

The directive sets **27 September 2026** as the **deadline for member states to transpose** the new rules into national legal systems.

Greenwashing

Green Claims Directive (GCD)

The GCD was proposed by the European Commission in March 2023. The aim of this directive is **to address practices** that, in business-to-consumer transactions, **misleadingly promote products as environmentally sustainable** through advertising or labels – without substantiating such claims with robust scientific evidence.

The GCD focuses specifically **on “explicit green claims”, encompassing written statements** providing environmental information that falls outside the scope of other EU legislation (referred to as “green claims”), **as well as voluntary trust marks**, quality marks, or similar designations intended to differentiate and endorse a product based on its sustainability-related attributes (also known as “environmental labels”) made about the company itself, their products and services.

This directive acts as *lex specialis* compared to the Empowering Consumers Directive, meaning that it **delineates the characteristics that voluntary environmental claims must possess to be admissible and therefore not be considered misleading.**

On **12 March 2024**, the **European Parliament** adopted its **first reading position** on the GCD proposal. Among other proposed modifications, the Parliament suggests that claims and evidence should be evaluated by the **external verifiers** within 30 days, with simpler claims and products potentially undergoing faster or simpler verification procedures.

The Parliament proposes that **green claims based solely on carbon offsetting are prohibited.** Companies may reference offsetting and carbon removal schemes in ads only for residual emissions, with credits coming from those practices certified per the Carbon Removals Certification Framework.

According to the amended proposal, **green claims concerning products containing hazardous substances may so far still be allowed.** However, the Commission should evaluate whether they should be entirely banned in the near future with the adoption of a targeted report.

Businesses found in breach of the rules may face **penalties**, including temporary exclusion from public procurement tenders, revenue loss, and fines amounting to at least 4% of their annual turnover.

Since the European Parliament has already adopted its first reading position, the legislative dossier will not lapse. Therefore, after the adoption of the common position by the Council of the EU (general approach), negotiations between the two co-legislators (the Council and the European Parliament), aimed at adopting the law, should commence.

Recent Case Law

On 20 March, the District Court of Amsterdam ruled that an airline company misled customers with its “Fly Responsibly” advertising campaign.

The case was brought in 2022 by Dutch NGOs. The court found that the airline made environmental claims based on vague and general statements about environmental benefits, thereby misleading consumers. The lawsuit focused heavily on the use of carbon offsetting schemes by airlines to reach carbon neutrality.

This ruling could set a precedent and potentially have a chain effect for other airlines that have used similar messages, as well as extending to other industries.

The legal basis upon which the court relied for its arguments is the Unfair Commercial Practice Directive. The new rules introduced by the **Empowering Consumers Directive** could ease a claim that an unsubstantiated claim is misleading.



Climate Target

EU Climate Law establishes a net greenhouse gas emissions reduction for the EU of at least 55% by 2030 and the EU climate neutrality goal by 2050. However, the intermediate target for 2040 is still to be determined. The European Commission is required to propose a legislative solution in this regard under Article 4(3) of the EU Climate Law.

While the drafting of the legal text is still underway, on 6 February the European Commission presented its [Communication](#), in which it recommended a 90% reduction target. The recommendation is based on more than 600 pages long [Impact Assessment](#).

On 25 March, the Environmental Council held a political debate on the recommendation. Denmark, Spain, Portugal, Finland and the Netherlands openly supported the 90% target recommendation, while Greece warned of a growing gap between climate neutrality policies and public opinion.

An official legislative proposal for setting the target will be made by the next European Commission for the 2024-2029 term, after the European elections under the new College of Commissioners. In the meantime, meetings are being held at the technical level. The Council's Working Party on the Environment is scheduled to discuss the proposed target on 19 April 2024.



Next Steps? Rules of Procedure

The final plenary session of the current term of the European Parliament took place in Strasbourg from 22 to 25 April 2024. Following this date, the current composition of the European Parliament will likely be unable to finalise legislative proposals before the June 2024 elections. Delays in adopting a law can occur for various reasons, such as failure to reach an agreement in interinstitutional negotiations between the two co-legislators (the Parliament and the Council), or when national governments cannot agree on a common position at the Council level (known as the “general approach”), used to negotiate a law text with the Parliament.

The **general rule** in these cases is that **at the end of the last part-session before an election, all unfinished business of the Parliament shall be considered lapsed**.

However, **legislative dossiers** that have **not been approved** during this term are **not necessarily lost**. Depending on their progress, work on a particular legislative dossier can continue into the next term. For a legislative file to remain legally valid for the next Parliament, **the European Parliament needs to adopt the file in plenary before the elections, whether at first reading, second reading, or under the consultation procedure**.

For files that do not reach the plenary of **the European Parliament before the elections, the end of the term also signifies the conclusion of work on them. The new Parliament will then decide whether to continue or discontinue work on the file**. At the beginning of the new parliamentary term, Parliament's Conference of Presidents (consisting of the European Parliament president and political group leaders) will decide, based on input from parliamentary committees, whether to continue working on “unfinished business”. This decision will be made by the Conference of Presidents, possibly in October 2024, and subsequently announced in plenary, also possibly in October 2024.

If the Conference of Presidents and plenary decide to continue this work, the newly elected Parliament will proceed with the next stage of the relevant decision-making procedure.

Traditionally, the Conference of Presidents decides to resume all unfinished legislative work. However, exceptions can be made for files that have become obsolete, and for which a new proposal by the Commission or renewed consultation by the Council is expected.

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